

REMARKS

Introduction

Claims 1 through 20 are pending in the application. Claims 1, 10 and 20 are the independent claims. There are no multiple dependent claims. No new claims have been added.

Claims 1, 10 and have been amended to eliminate the language that described the engagement surface as being "generally planar". No new matter is added by this amendment. This amendment is a broadening amendment.

Claim Rejection 35 USC §103

Claims 1-3, 6-9 — Dixon et al in view of Waud and Wallace

The examiner rejected claims 1 - 3 and 5 - 7, under 35 USC §103(a) in light of U.S. Patent Reissue 34,969, granted to Dixon et al (Dixon), in view of U.S. Patent 3,682,507, granted to Waud (Waud), and in view of U.S. Patent 4,325,985, granted to Wallace (Wallance).

It appears that the examiner rejected claim 1 in light of Dixon, in combination with both Waud and Wallace, with Wallace teaching the coating of the fastener, and Waud teaching the material transfer means of claim 1.

First, with respect to the teaching of Waud, as stated previously, we do not believe that Waud teaches the arrangement of the material transfer means with respect to the second thread. In particular, the claims as originally filed and as amended call for: "material transfer means within said second diameter extending from a location adjacent said tip to a location adjacent said second thread." The drilling point 16 of Waud does not extend to the second thread.

To the extent that the Examiner can say that the drill point 16 of Waud also comprises material transfer means, to meet all of the limitations of the claims, the drilling point 16 of Waud would need to extend farther up the shank.

However, to make this distinction more clear, Applicant has amended the claim to say the following:

said second thread not extending to said distal end, said shank distal end defining material transfer means within said second diameter extending from a location adjacent said tip to a location adjacent said second thread such that said material transfer means spans the axial distance between said tip and said second thread

No new matter is added by this amendment. Support for this amendment is found at page 9, line 28 of the specification as filed.

Second, with respect to the alleged teaching of Wallace to combine a masonry fastener with a coating, while Applicant believes the combination of Wallace and Dixon is improper, Applicants have amended claim 1. Claim 1 now says the "self drilling means [creates] masonry dust from [the] masonry support structure, some of said masonry dust being mixed with [the] coating." No new matter is added by this amendment. Support for this amendment is found at page 12, line 15 of the specification as filed.

Wallace certainly cannot be read as suggesting the desirability of mixing a coating with masonry dust.

Finally, with respect to both Waud and Wallace, Applicants believe the combination of these reference with Dixon to make the obviousness rejection is improper.

As noted previously, Waud does not teach a fastener connected to a masonry support structure. Waud only teaches a fastener connecting a thin sheet

of material to a thicker sheet spaced by a predetermined thickness of insulating material. Thus, Applicant believes that it is improper to say that one of ordinary skill in the art would combine the teaching of Waud with respect to fasteners for metal to the masonry fastener taught by Dixon to make the combination suggested by the examiner.

Similarly, Applicant does not believe that Wallace specifies that masonry fasteners be coated with adhesives, and the examiner has not said that suggestion is present, thus it seems inappropriate to say one of ordinary skill in the art would consider the method of coating fasteners taught by Wallace as being suitable for masonry fasteners.

For the reasons stated above, we believe claim 1 is allowable over the art cited by the examiner.

Claims 2 through 10 depend from claim 1, incorporating all of its limitations. Applicant renews the arguments made above with respect to claim 1 for claims 2 through 10 without repeating them for the sake of brevity. Applicant believes that claim 1 should now be considered allowable, and thus claims 2 through 10 as well.

With particular respect to claim 3 and the wing claimed therein, Applicant maintains its position that the purpose for the wings taught by Waud and attributed by the examiner to a person of ordinary skill in the art, is not the purpose stated in the specification for the present invention (see page 12, line 1), and thus does not support the examiner's argument that the wing of claim 3 are obvious.

With particular respect to claim 7 and the polymer coating claimed therein, the purpose for the polymer coating attributed by the examiner to a person of ordinary skill in the art of bonding the threads to the hole, is not the purpose stated in the specification for the present invention (see page 10, line 27 and page 13, line 19), and thus does not support the examiner's argument that the polymer coating of claim 7 is obvious.

In fact, to make the purpose of the polymer coating more clear, Applicants have amended claim 7 to state that the polymer coating is "cured". No new matter is added by this claim, see page 10, line 27.

Claims 10-14, 16, 19, 20 — Dixon et al in view of Waud and Duffy

The examiner rejected claims 10 - 14, 16, 19, and 20 under 35 USC §103(a) in light of Dixon, in view of Waud and U.S. Patent 5,611,652, granted to Richard J. Duffy et al (Duffy).

It appears that the examiner rejected claims 10 and 20 in light of Dixon, Waud, Duffy and the general level of skill in the art, with Dixon and Waud teaching the structural elements of the fastener, and Duffy teaching a resin-coated fastener, and it being an obvious matter of design choice to form the resin into a "bead" on the intermediate portion of the fastener.

As stated above, and incorporated herein, Applicant respectfully disagrees the the appropriateness of combining Waud and Dixon. Similarly, Applicant feels that combination of Duffy which teaches a fastener lock for nut is not appropriately combined with a masonry fastener, especially as the masonry fastener of Dixon is not self-drilling.

Applicant renews its objection to the examiner's general statement that forming a resin bead in a particular location is a matter of obvious design choice, and respectfully request that the examiner provide specific teaching of this element.

The examiner states that the purpose of forming a resin bead is to lock the fastener in place; however, the examiner does not state any purpose for locating the resin bead away from the tip of the fastener.

In comparison, the inventors have found, and as is described in the specification at page 16, line 1, it is desirable to allow a substantial portion of the

dust or the powder created during the drilling to escape, while trying to preventing the peeling or crumbling of the resin.

Applicants believe that the examiner has not shown that Duffy is properly combined with Waud and Dixon to render claims 10 and 20 obvious, and thus Applicants believe claims 10 and 20 are allowable over the art cited by the examiner.

Claims 11 — 14, 16, and 19 depend from claim 10, incorporating all of its limitations. Applicant renews the arguments made above with respect to claim 10 for these claims without repeating them for the sake of brevity. Applicant believes that claim 10 should now be considered allowable, and thus claims 11 - 14, 16 and 19 as well.

Claim 12, which depends from claim 10, was rejected, because the examiner argues that a "bead" that "has a generally cardioid-shaped configuration which subtends substantially 360° around the axis of the shank" is a matter of obvious design choice.

Applicant respectfully disagrees that forming the specifically claimed cardioid-shaped bead is a matter of obvious design choice, and repeats its request that the examiner provide specific teaching of this element.

The examiner states that the purpose of forming a cardioid-shaped resin bead is to lock the fastener in place. However, as noted above, the location and shape of the resin bead provide additional functions not suggested by the examiner. Those functions being to allow a substantial portion of the dust or the powder created during the drilling to escape, while trying to preventing the peeling or crumbling of the resin.

The prior art cited by the examiner does not suggest these functions, and since none of the prior art actually teaches the particular claimed location of the resin bead on a self-drilling fastener (claim 10) or the particular shape of the resin

bead (claim 12), Applicants believe the examiner has not made a prima facie case of obviousness for the claimed location and shape of the resin bead.

With respect to claim 13, which depends from claim 11, the examiner considers it a matter of obvious design choice to use "30% nylon powder by volume" in the bead, and states that Applicant has not shown criticality for this feature.

Applicant respectfully disagrees. At page 15, line 25, Applicant stated the following:

"It was found that a approximately 30% by volume nylon filler in the resin system was suitable while a 50% by volume or more nylon filler made the resin softer which apparently facilitated peeling and crumbling of the resin mass during the drilling."

As noted above, the resin bead needs to resist peeling and crumbling to function, and the examiner has not shown that the prior art suggests this function or that any of the prior has all of the structures claimed and those structures inherently have this function.

With respect to claim 14, Applicant notes that this is another way of saying the resin bead has approximately 30% by volume of nylon filter, so Applicants comments with respect to claim 13 apply and are incorporated herein without being restated for the sake of brevity.

With respect to claim 16, which claims radially extending wing portions, Applicant believes claim 16 is allowable for the same reasons advance with respect to claim 3, which are incorporated herein but are not repeated here for the sake of brevity

With respect to claim 19, Applicant has described the spacing of the thread and the location of the proximal portion and the first intermediate portion with respect to that spacing to further describe the location of the resin bead, which

Applicant believes is important for the reasons stated with respect to claims 10 and 12 which are incorporated herein, but are not repeated for the sake of brevity.

Absent a showing by the examiner that the prior art suggests the specific location of the resin bead for the reason stated in the application, or a prior art reference inherently has a resin bead located on a particular self-drilling masonry fastener, Applicants believe the rejection of claim 19 is improper.

Claim 15 — Dixon et al in view of Waud, Wallace and Duffy

The examiner rejected claim 15 under 35 USC §103(a) in light of Dixon, in view of Waud, Wallace and Duffy.

Since claim 15, depends from claim 10, we believe that claim 15 is allowable for the reasons stated with respect to claim 10, which are incorporated herein, but are not repeated for brevity.

Claim 17 — Dixon et al in view of Waud, Duffy and Regensburger

The examiner rejected claim 15 under 35 USC §103(a) in light of Dixon, in view of Waud, Duffy and US Patent 4,257,307, granted to Regensburger.

Since claim 17, depends from claim 10, we believe that claim 17 is allowable for the reasons stated with respect to claim 10, which are incorporated herein, but are not repeated for brevity.

Claim 18 — Dixon et al in view of Waud, Wallace and Duffy

The examiner rejected claim 15 under 35 USC §103(a) in light of Dixon, in view of Waud and Duffy.

Since claim 18, depends from claim 10, we believe that claim 18 is allowable for the reasons stated with respect to claim 10, which are incorporated herein, but are not repeated for brevity.

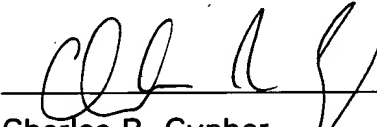
Conclusion

In view of the above, Applicant submits that the claims remaining in the application are in condition for allowance and allowance of the claims at an early date is solicited.

Please direct any calls in connection with this application to the undersigned at (510) 832-4111.

Respectfully submitted,

Date: August 24, 2005
Reg. No.: 41,694
Tel. No.: 510-832-4111
Fax No.: 510-832-4115
Customer No.: 498


Charles R. Cypher
Law Offices of James R. Cypher
405 14th Street, Suite 1607
Oakland, CA 94612

Attachments: Check No. 11876 for \$1020
Return Receipt Post Card